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80-340

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF WASHINGTON, PETITIONER

V.

WILLIAM O. DYER, RESPONDENT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does due process require that a prior felony conviction which arose from a plea of guilty entered prior to the date of decision in Boykin v. Alabama be subject to collateral attack by a criminal defendant in a subsequent proceeding for enhanced punishment under a state habitual criminal statute on the ground that the procedures for acceptance of the prior plea were not in compliance with the requirements announced in that decision?

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The Petitioner, the State of Washington, request that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals of the State of Washington, Division II, issued on March 21, 1980.

OPINION BELOW

The opinion of the Court of Appeals of the State of Washington, Division II, is unreported. A copy is appended.

JURISDICTION

The judgment of the Court of Appeals of the State of Washington, Division II, was filed on March 21, 1980. The timely motion for reconsideration was denied on April 18, 1980. A timely petition for review in the Supreme Court of the State of Washington was denied on June 20, 1980, and this petition for certiorari was filed within sixty days of that date. This Court's juris-

diction is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> . . . nor shall any State deprive any person of life, liberty, or property without due process of law . . .

Article 1, Section 3, of the Constitution of the State of Washington provides:

> No person shall be deprived of life, liberty, or property, without due process of law.

The Revised Code of Washington, 9.92.090, provides in relevant part:

> Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been twice convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a

> felony, or who shall previously have been four times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in the state penitentiary for life.

STATEMENT OF THE CASE

William O. Dyer was charged by Information on March 9, 1978, of the crimes of Possession of Stolen Property in the Second Degree and Conspiracy to Commit Second Degree Theft. The evidence in the case revealed that Dyer, with the assistance of one Terry Lynn Cook and others, used a stolen checkbook and forged checks for the acquisition of a large dollar volume of construction materials. Some of these materials were used in Dyer's "construction business," and some were returned to the "sellers" for refunds. Dyer was convicted by jury trial in Kitsap County, Washington of

both charges on June 16, 1978.

After the jury returned its verdict of guilty on both charges, on July 5, 1978, the State filed a Supplemental Information alleging that Dyer had attained the status of an habitual criminal. The state relied on two portions of Dyer's previous criminal history: (1) a Second Degree Burglary conviction in Superior Court of the State of Washington for Kitsap County resulting from a guilty plea entered in August, 1962, and (2) any one of three (alleged in the alternative) prior felony convictions for Unlawful Possession or Delivery of a Controlled Substance in the 203rd Judicial Court of the State of Texas for Dallas County resulting from guilty pleas in August, 1974.

Prior to trial on the Supplemental Information, counsel for Dyer sought to exclude the use of his 1962

burglary conviction on the ground, inter alia, that the record failed to establish the "voluntariness" of his guilty plea. The trial court rejected this and all other claims as to this conviction, and held it to be admissible.

Dyer was tried on the Supplemental Information on September 5, 1978, before a jury, and was found, by verdict of the jury, on September 6, 1978 to have attained the status of an habitual criminal.

On direct appeal, Dyer contended in part that it was error for the State to be permitted to rely upon the 1962 burglary conviction for habitual criminal purposes since the record failed to show that at the time of plea entry he had been fully informed of the consequences of his plea as required by the subsequent decision of this Court in Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). By its decision of March 21, 1980, the Court of Appeals of the

State of Washington accepted such contention, given the recent holding on this issue by the Supreme Court of the State of Washington in State v. Holsworth, 93 Wn.2d 148, 607 P.2d 845 (1980), and remanded the case for resentencing. A motion for reconsideration of this decision was denied, as was a petition for review by the Supreme Court of the State of Washington.

REASONS FOR ALLOWANCE OF WRIT

I.

THE DECISION OF THE COURT BELOW IS AN ERRONEOUS APPLICATION OF FEDERAL CONSTITUTIONAL PRINCIPLES.

This case presents the Court with the much needed opportunity to further define the scope of a criminal defendant's right to collaterally attack a prior felony conviction in light of the Court's decision in Boykin v. Alabama, supra, and to further define the rights

of states to rely upon such prior convictions for use in proceedings for enhanced punishment under recidivist and habitual offender statutes. Not since the case of Burgett v. Texas, 389 U.S. 109, 88 S.Ct. 258, 19 L.Ed.2d 319 (1967), it is believed that the Court has squarely confronted such an issue in this context.

Boykin v. Alabama, supra, held that, as a matter of constitutional due process, for a guilty plea to have been knowningly and voluntarily entered, the record must show that the pleading defendant had been advised of the nature of the offense, the sentencing alternatives possible, and that his plea of guilty necessarily waives his constitutional rights to remain silent, to confront accusers, and to a jury trial. The issue presented by this petition is whether a conviction arising from a pre-Boykin plea, accepted without compli-

ance to such requirements, may be used by the State of Washington in sentence enhancement proceedings in 1978 under the Washington Habitual Criminal Statute, RCW 9.92.090.

In holding that the State was barred from use of such convictions, the court below accepted and felt bound by the reasoning and decision in State v. Holsworth, supra. Thus, it is that decision which must be the focus analysis.

State v. Holsworth, supra, involved seven cases consolidated on appeal, all presenting precisely the issue in this petition. In Holsworth, the court described its holding as being:

> . . . that the defendant in a habitual criminal proceeding can attack the use of convictions based upon pre-Boykin guilty pleas and that the state has the burden of proving beyond a reasonable doubt that the prior conviction was based on a valid guilty plea.
>
> 607 P.2d at 847.

The reasoning of that decision is based primarily upon an analogy to the decision of this Court in Burgett v. Texas, supra, holding that a conviction invalid under Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), could not be used for enhancement of punishment under a state's recidivist statute. Specifically, the Holsworth court wrote:

> An analogy must be drawn to Burgett v. Texas, 389 U.S. 109, 19 L.Ed.2d 319, 88 S.Ct. 258 (1967), the in which United States Supreme Court ruled that it was reversible error to admit, for purposes of enhanced sentencing under a habitual criminal statute, evidence of a prior conviction by guilty plea entered by a defendant unrepresented by counsel at the time of the plea. The conviction whose use was successfully challenged in Burgett had occurred before Gideon v. Wainright, 372 U.S. 335, 9 L.Ed.2d 799, 83 S.Ct. 792 (1963), established the right to counsel. But the Supreme Court refused to allow use of the prior conviction because admission of the

> evidence would have in effect "renewed" the deprivation of the defendant's constitutional rights.
>
> 607 P.2d at 848.

In response to the State's petition that the analogy was inappropriate given the differing levels of constitutional stature, the Holsworth court wrote:

> Both Gideon and Boykin, then, are "merely prophylactic" to the extent they insure the existence of procedures which protect the defendant's constitutional rights to remain silent, to confront his accusers, and to trial before a jury. Extension of the Burgett analysis to the use of pre-Boykin pleas which were not adequately informed is justified by the importance of full disclosure to valid waiver of these constitutional rights through the plea of guilty.
>
> 607 P.2d at 848-49.

Finally, the court in Holsworth stated:

> Thus, it can be seen that failure to disclose the nature of the offense or consequences of a plea may result in a procedural defect of constitutional magnitude if the defendant's plea as a consequence of that failure is involuntary. As in Burgett,

> violation of the defendant's constitutional right is "renewed" through use in a habitual criminal proceeding of an uninformed guilty plea which thus violates due process.
>
> 607 P.2d at 849.

The error in the Holsworth reasoning is in its inappropriate extension of Burgett v. Texas to pre-Boykin plea requirements. Gideon v. Wainwright, supra, involved the right to counsel, a Sixth Amendment right of fundamental constitutional stature. For that reason, the holding of Gideon v. Wainwright is fully retroactive. Kitchens v. Smith, 401 U.S. 847, 91 S.Ct. 1089, 28 L.Ed.2d 519 (1971). Thus, pre-Gideon convictions are themselves constitutionally infirm and subject to collateral attack. As stated in Burgett, to allow the State to rely on such constitutionally invalid convictions would cause the prior constitutional violation to be "renewed."

By contrast, Boykin v. Alabama, supra, established constitutionally prescribed procedural rules which seek to insure and protect the underlying fundamental right involved: a knowing, intelligent, and voluntary plea of guilty. In that sense, the rule announced in Boykin is prophylactic in nature rather than itself being of fundamental constitutional stature. For this reason, the prevailing view, in the absense of any specific holding by this court, is that the rule announced in Boykin v. Alabama is not applied retroactively. See, e.g., Moss v. Craven, 427 F.2d 139 (9th Cir. 1970); Wood v. Morris, 87 Wn.2d 501, 554 P.2d 1032 (1976).[1]

[1] The same result was reached with respect to Rule 11, Federal Rules of Criminal Procedure, when the Court held that the plea entry procedures of Rule 11 as described in McCarthy v. United States, 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969), should not be applied retroactively. Halliday v. United States, 394 U.S. 831, 89 S.Ct. 1498, 23 L.Ed.2d 16 (1969).

The impropriety of the Burgett/ Boykin analogy is clear. No constitutional violation for reason of non-compliance with Boykin v. Alabama, supra, can exist as to any pre-Boykin plea. Rather obviously, subsequent habitual criminal proceedings cannot result in "renewed" constitutional violations as to such pleas because that which never existed cannot be "renewed." To say that the same plea would be entered differently under presently applicable constitutional standards does not imply that there exist any constitutional infirmaties in the conviction as it presently stands.

The reasoning of the Washington Court is inconsistent with the recent decision of this Court in Lewis v. United States, ____ U.S. ____, 100 S.Ct. 915, _____ L.Ed.2d ____ (1980), decided thirteen days after Holsworth. In Lewis, the defendant had been convicted

under 18 U.S.C. Section 1202(a)(1) which prohibits possession of a firearm by a person who "has been convicted by a court of the United States or of a State . . . of a felony." On appeal, it was argued that the reliance upon the prior state court felony conviction as an essential element of the subsequent criminal offense was improper since that conviction was obtained in violation of Gideon v. Wainwright, supra. In rejecting such claims, this Court held that Section 1202(a)(1) prohibits a convicted felon from possessing a firearm despite the fact that the predicate felony may be subject to collateral attack, and that no constitutional violation arises as a result of the prohibit because Congress could rationally conclude that any existing felony conviction, including an allegedly invalid one, is a sufficient basis upon which to prohibit possession

of a firearm.

The reasoning and holding in Lewis v. United States, supra, very clearly shows the error in Holsworth, and the instant case as well. Lewis involved a constitutional right of much greater stature than the mere prophylactic rule of Boykin and involved the allegedly improper conviction as being an element of a separate criminal offense rather than support for an enhanced punishment status. Finally, while Holsworth, involves an extension of Burgett into areas involving substantially different constitutional issues, Lewis marks the limitation on the Burgett "renewal" analysis even within the area of uncounseled convictions. The error of State v. Holsworth, supra, and the instant case by application, could not be more clear.

The holding of State v. Holsworth, supra, is also directly inconsistent

with the decision of at least two other states. In People v. Gonzales, 38 Co.A. 522, 565 P.2d 945 (1977), the Colorado Court of Appeals rejected the efforts of a defendant to suppress two prior convictions in subsequent habitual criminal proceedings. One such conviction was based upon a pre-Boykin to First Degree Burglary. In describing the framework for its decision, the court stated:

> Whether the previous convictions were constitutionally procured is an issue which may properly be raised in an habitual offender proceeding. See Burgett v. Texas, 389 U.S. 109, 88 S.Ct. 258, 19 L.Ed.2d 319; Swift v. People, 174 Colo. 259, 488 P.2d 80. If a defendant's guilty plea was not voluntary and knowing, it was obtained in violation of due process, and a conviction based thereon cannot be used for the purpose of enhancing the punishment for another offense. See Swift v. People, supra. The test in this state for voluntariness of a guilt plea is whether there was compliance by the sentencing court with the requirements of Crim.P. 11 in effect at the

> time of the plea and of Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274, as to a plea received after its announcement date, June 2, 1969. People v. Hubbard, 184 Colo. 243, 519 P.2d 945. Boykin is not applied retroactively. People v. Alvarez, 181 Colo. 213, 508 P.2d 1267.
>
> 565 P.2d at 948.

Further, in State v. LeBlanc, 315 S.2d 654 (La. 1975), the Louisiana Supreme Court considered a defendant's challenge in a prosecution under the Louisiana Habitual Offender Law to a prior forgery conviction resulting from a 1968 plea of guilty. In rejecting this challenge, the court wrote:

> In order for a prior felony conviction to form the basis for a multiple offender charge, it must, inter alia, have been obtained without the violation of a specific federal constitutional right of the accused. Defendant argues here that the prior conviction, which resulted from a plea of guilty to the charge of forgery, was obtained in violation of his federal constitutional rights, specifically, his privilege

> against self-incrimination under the fifth amendment to the United States Constitution and his sixth amendment rights to trial by jury and the confrontation of his accusers, as articulated in Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969. It is well-settled that the rule of law announced in Boykin decision is prospective in operation only from the date of the decision, June 2, 1969. As the defendant's guilty plea to the forgery charge was entered on March 15, 1968, prior to the rendition of the Boykin decision, the rule has no application here. Accordingly, defendant's assignment of error is without merit.
>
> 315 So.2d at 655-56.

In summary, the court below, bound by the precedent of State v. Holsworth, has erroneously applied the decisions of this Court in Boykin v. Alabama and Burgett v. Texas, and has made such a decision in conflict with Lewis v. United States and the decisions of last resort of at least two other states. This Court should grant the writ of certiorari

to review these proceedings and resolve such conflicts.

II.

THE DECISION BELOW IS BASED UPON FEDERAL CONSTITUTIONAL PRINCIPLES AND IS NOT SUPPORTED BY AN INDEPENDENT AND ADEQUATE STATE GROUND.

Were the Judgment below to be based on an independent and adequate state ground, this Court would lack jurisdiction. Film Fox Corporation v. Muller, 296 U.S. 207, 56 S.Ct. 183, 80 L.Ed. 158 (1935). However, the decision below is a direct result of the decision in State v. Holsworth, supra, and that decision is based upon that court's view of federal constitutional mandates.

As is clear from the Court's analysis of Boykin v. Alabama and Burgett v. Texas, and its references to Henderson v. Morgan, 426 U.S. 637, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976), the issue is primarily

analyzed as one of federal constitutional requirements. Some reference is made to prior Washington cases regarding the requirements for a knowing and voluntary guilty plea. State v. Cimini, 53 Wash. 268, 101 P. 891 (1909); State v. Taft, 49 Wn.2d 98, 297 P.2d 1116 (1956); Woods v. Rhay, 68 Wn.2d 601, 414 P.2d 601 (1966). However, these cases essentially establish nothing more than the underlying constitutional requirement that: "A plea of guilty shall not be accepted ...a plea of guilty shall not be accepted unless made voluntarily after proper advice and with full understanding of the consequences. Kercheval v. United States, 274 U.S. 220, 47 S.Ct. 582, 71 L.Ed. 1109 (1927). None of the cited Washington cases established requirements similar to those imposed by Boykin v. Alabama, and, in fact, the Washington courts have in the past attempted to distinguish and

limit the effect of Boykin. Miesbaur v. Rhay, 79 Wn.2d 505, 487 P.2d 1046 (1971); Wood v. Morris 87 Wn.2d 501, 554 P.2d 1032 (1976).[2]

In short, the Supreme Court of the State of Washington has expressed its view of Federal Constitutional principles, and the Court below has accepted that view as mandatory president. As such, the issues presented here are within the jurisdiction of this Court. Deleware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, ____ L.Ed.2d ____ (1979); Oregon v. Haas, 420 U.S. 714, 95 S.Ct. 1215, 43 L.Ed.2d 570 (1975); California v. Green, 399 U.S. 149, 90 S.Ct. 1930, 26

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[2] That portion of Woods v. Rhay, supra, set out in Holsworth at 93 Wn.2d 157, 607 P.2d 849-50, had previously been construed by the Washington Supreme Court not to impose constitutional required plea entry procedures, but merely establish a "recommended approach" as to better "forestall later attacks" on such pleas. Miesbauer v. Rhay, supra, 79 Wn.2d at 507, 487 P.2d at 1047.

L.Ed.2d 489 (1970).

While having made some mention of State law, the Holsworth opinion and holding clearly amount to a more restrictive interpretation of federal constitutional principles than has been imposed by this Court. Lewis v. United States, supra. This is not permissible, and it is within the jurisdictional authority of this Court to correct. North Carolina v. Butler, 441 U.S. 369, 99 S.Ct. 1755, ____ L.Ed.2d ____(1979); Oregon v. Haas, supra.

At very least, this case presents a situation where the state court "felt compelled by what it understood to be federal constitutional considerations to construe ... its own law in the manner it did..." Zacchini v. Scripps-Howard Broadcasting Co., 448 U.S. 562, 568, 97 S.Ct 2849, 53 L.Ed.2d 965 (1977); Delaware v. Prouse, supra.

In the instant case, the State Constitutional provisions are afforded similar scope as their federal counterparts[3] and any constitutional holding on state grounds depended upon the state court's view of the reach of the Fourteenth Amendment. Thus, if the state court misapprehended federal law, "it should be freed to decide... these suits according to its own local law." Southern Railroad Co. v. Mayfield, 340 U.S. 1, 5, 71 S.Ct. 1, 95 L.Ed.2d 3 (1950); Delaware v. Prouse, supra.

Thus, the instant case is properly within the jurisdication of this Court.

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[3] With respect to similar provision of state and federal constitution for due process in areas of criminal procedures, the Washington Supreme Court has considered federal decisions "not necessarily controlling, but entitled to great weight." Young v. Konz, 91 Wn.2d 532, 588 P.2d 1360 (1979), and cases cited therein.

CONCLUSION

For the foregoing reasons, the Writ of Certiorari should issue.

Respectfully submitted,

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KENNETH G. BELL
Deputy Prosecuting Attorney

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON

THE STATE OF WASHINGTON	)	
Respondent,	)	NO. 3732-II
v.	)	Division Two UNPUBLISHED
WILLIAM O. DYER,	)	OPINION
Appellant.	)	Filed March 21, 1980

PETRIE, J. - - William O. Dyer was sentenced to life imprisonment in 1978 following a jury determination of his status as a habitual criminal. He contends in part on appeal that one of his prior felony convictions, upon which the State relies to establish his status, resulted from his entry of a plea of guilty to a charge of burglary in 1962 and that he was not then fully informed of the consequences of his plea as now required by Boykin v. Alabama, 395 U.S. 238, 23 L. Ed. 2d 274, 89 S. Ct. 1709 (1969). Pursuant to the recent mandate of the Supreme Court, we remand for

APPENDIX

resentencing proceedings in which the State shall be given the opportunity to prove beyond a reasonable doubt that the prior burglary conviction was validly obtained under the Boykin standards. State v. Holsworth, 93 Wn.2d 148, _____ P.2d _____ (1980).

Because of our resolution of this issue, we find it unnecessary to discuss Mr. Dyer's other assignments of error which pertain solely to the habitual criminal portions of his 1978 trial. In the event that the State should sustain its burden of proof as to the validity of the prior burglary conviction and Mr. Dyer is once again sentenced to a life term of confinement, he may renew those assignments of error on a subsequent appeal. Obviously, they will not be moot if Mr. Dyer is sentenced merely to the statutory maximum provided for the class C felony, i.e. possession of stolen goods

in the second degree, of which he was convicted in 1978 by verdict of the jury. Accordingly, we address only those assignments of error which pertain to the underlying trial in 1978.

Mr. Dyer contends he was denied a fair trial on the possession charge (and a gross misdemeanor charge of conspiracy) because of prosecutorial misconduct committed when the deputy who tried the case announced in the presence of the jury that he would call as his next witness the defendant's trial counsel. This is a frivolous assertion. The court immediately declared that counsel would not be called as a witness, and defendant sought no further remedial action. A defendant must avail himself of trial motions in order to correct trial actions which he deems prejudicial. State v. Beard, 74 Wn.2d 335, 444 P.2d 651 (1968). The trial court committed no error.

Next, defendant contends the trial court erred by permitting the prosecution, over defense objections, to introduce into evidence as an exhibit a written statement of a witness which had been given to the police and which implicated Mr. Dyer in the crimes charged. The exhibit was introduced on a re-direct examination of the witness as a prior statement consistent with the witness's testimony on direct examination after that testimony had been impeached by cross-examination, leaving the impression that the witness's direct testimony was a recent fabrication. Under those circumstances, rehabilitation of the witness is permissible through use of a prior consistent statement. State v. Bradley, 17 Wn. App. 916, 567 P.2d 650 (1977) . The trial court committed no error.

This cause is remanded with

direction for re-sentencing proceedings consistent herewith.

A majority of the panel having determined that this opinion not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

/s/ Petrie, J.

WE CONCUR:

/s/ Reed, C. J.

/s/ Pearson, J.

FEB 4 1981
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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF WASHINGTON, PETITIONER

V.

WILLIAM O. DYER, RESPONDENT

NO. 80-340

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to 28 U.S.C. §1915, Motion is hereby made that the Respondent, William O. Dyer, be allowed to proceed in forma pauperis.

Respondent was appointed an attorney of the Bar of the State of Washington; James L. Reese, III, for the trial in chief on May 1, 1978 and on appeal to the Court of Appeals, Division II by Order of Indigency on October 18, 1978. Both appointments were in Kitsap County Criminal Cause No. C-3604.

Respondent's Affidavit is attached to this Motion.

DATED this 4th day of February, 1981.

James L. Reese, III
Counsel for Respondent

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF WASHINGTON, PETITIONER V. WILLIAM O. DYER, RESPONDENT	NO. 80-340 AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, WILLIAM O. DYER, being first duly sworn, depose and say that I am the Respondent in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore, that I believe that I am entitled to redress; and that the issues which I desire to present on appeal are the following:

1. The Supreme Court of the United States is without jurisdiction to consider Petitioner's Writ of Certiorari.

2. The decision of the Court of Appeals and of the State of Washington in State v. William O. Dyer, No. C-3604 should be affirmed.

1. Are you presently employed? NO

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

JAMES L. REESE, III
ATTORNEY
P. O. BOX 307
612 SIDNEY
PORT ORCHARD, WASH. 98366
TELEPHONE 876-1028

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. $1,000 PER MO 1971 Cook Dallas Tx

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? S.S. $419.00

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months. SS $419.00

3. Do you own any cash or checking or savings account? YES

a. If the answer is yes, state the total value of the items owned. $10.00

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? 1959 DESO

a. If the answer is yes, describe the property and state its approximate value. 1959 DESO - VALUE $50.00

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5. List the persons who are dependent upon you for support and state your relationship to those persons. NONE

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

William O. Iyer
William O. Iyer

SUBSCRIBED AND SWORN to before me this 4th day of February, 1981.

Helen E. Reed
Notary Public in and for the State of Washington, residing at Bremerton.

Let the Respondent proceed without prepayment of costs or fee or the necessity of giving security therefore.

DATED this_____day of_____, 1981.

_____
Supreme Court Justice

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PORT ORCHARD, WASH. 98366
Telephone 876-1026

NO. 80-340

IN THE

SUPREME COURT OF THE UNITED STATES

STATE OF WASHINGTON, PETITIONER

V.

WILLIAM O. DYER, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE

COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

BRIEF FOR RESPONDENT IN RESPONSE

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STATUTES

Washington State Rules of Appellate Procedure (RAP) 2.2 (b) (1):

> Appeal by State or a Local Government in Criminal Case. The State or a local government may appeal in a criminal case only from the following superior court decisions and only if the appeal will not place the defendant in double jeopardy:
>
> (1) Final Decision, Except Not Guilty. A decision which in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing a indictment or information.
>
> (2) Pretrial Order Suppressing Evidence. A pretrial order suppressing evidence, if the trial court expressly finds that the practical effect of the order is to terminate the case.
>
> (3) Arrest or Vacation of Judgment. An order arresting or vacating a judgment.
>
> (4) New Trial. An order granting a new trial.

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STATEMENT OF THE CASE

The Court of Appeals of the State of Washington, Division II, remanded Mr. Dyer's appeal on March 21, 1980.

Judge Petrie stated therein:

> Pursuant to the recent mandate of the Supreme Court, we remand for resentencing proceedings in which the State shall be given the opportunity to prove beyond a reasonable doubt that the prior burglary conviction was validly obtained under the Boykin standards. State v. Holsworth [citation omitted].

(See Petitioner's Appendix).

On June 20, 1980, Petitioner's Petition for Review to the Washington State Supreme Court was denied. (See Respondent's Appendix, Exhibit 1).

On August 19, 1980, Petitioner filed a Petition for a Writ of Certiorari in this Court.

On September 15, 1980, a "Stipulation as to Validity of Prior Guilty Plea" was entered in the trial court in Kitsap County Superior Court Cause No. C-3604. It was stipulated that Mr. Dyer's plea to guilty to second degree burglary on August 13, 1962 was not entered in compliance with Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 23 L.Ed.2d 274 (1969). (See Respondent's Appendix, Exhibit 2).

Thereafter, the Honorable Judge Robert J. Bryan of Kitsap County Superior Court entered an Order vacating Mr Dyer's

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habitual criminal adjudication and sentence. (See Respondent's Appendix, Exhibit 3).

On the same day, September 15, 1980, a Judgment and Sentence, finding Mr. Dyer guilty of possession of stolen property in the second degree, was entered. (See Respondent's Appendix, Exhibit 4).

SUMMARY OF ARGUMENT

Petitioner's application for a Writ of Certiorari should be dismissed because Petitioner did not seek a Writ from a final judgment of the Court of Appeals of the State of Washington, Division II. Petitioner did not appeal as provided for in Washington Rules of Appellate Procedure (RAP) 2.2 (b) (1) from the final decision of Kitsap County Superior Court entered on September 15, 1980.

The application herein should also be dismissed because the Washington appellate courts correctly interpreted federal constitutional law and ruled that a conviction entered before Boykin v. Alabama, supra, could not be used by the State in subsequent habitual criminal proceedings brought after the Boykin decision, where the record failed to indicate whether the defendant voluntarily entered a plea of guilty.

Finally, the State of Washington decided State v. Holsworth, supra,-which was cited by the Court of Appeals as the basis of its decision with regard to Mr. Dyer's appeal-in the alternative according to state law. Consequently, there exists independent and adequate state grounds for that court's decision, irrespective of federal constitutional law.

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REASONS TO DENY THE WRIT

I

Petitioner did not seek a Writ of Certiorari from a final judgment of the Court of Appeals.

The procedure the Petitioner sought to obtain a Writ of Certiorari is set forth in Respondent's Statement of the Case.

Long established precedent in the United States Supreme Court establishes that this Court will discretionarily issue a Writ of Certiorari only when a Petition is sought from a final judgment.

Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595 (1942), concerned habeas corpus proceedings wherein the Petitioner's application for a Writ of Certiorari was denied because he had not presented his application for habeau corpus to the highest court of the state.

In Betts, Petitioner had not appealed from the trial court's final judgment to the appellate courts after the case was remanded.

It is stated at 461 in Betts v. Brady:

> Although the judgment is final in the sense that it is not subject to review by any other court of the state, we may, in our discretion, refuse the Writ where there is a higher court of the state which another Petition for the relief sought could be addressed.

(See also, Tenner v. Dullea, 314 U.S. 692, 62 S.Ct. 364, L.Ed. 3, (1941) Writ refused because of failure to apply to highest court of the state).

Here, the Petitioner's Petition for Review by the Supreme Court of the State of Washington was denied on June 20, 1980, nearly 3 months before Judge Bryan entered his final judgment on September 15, 1980.

In Bruce v. Tobin, 245 U.S. 18, 38 S.Ct. 7, 62 L.Ed. 123 (1917),

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the Supreme Court of South Dakota had reversed the trial court and had remanded for a new trial. Tobin applied for a Writ of Certiorari before the new trial occurred, such as Petitioner, the State of Washington, did here on August 19, 1980; nearly one month before a final judgment was entered in Kitsap County Superior Court on September 15, 1980.

Mr. Chief Justice White stated in Bruce v. Tobin, supra, at 19:

> It may be indeed said that although the case was remanded by the court below for a new trial, the action of the court was in a sense final because it determined the ultimate right of the father to recover and the general principles by which that right was to be measured. But that contention is not open as it was settled under Section 709, Rev. Stat. (Section 237 Judicial Code), that the finality contemplated was to be determined by the face of the record and the formal character of the judgment rendered-a principle which excluded all conception of finality for the purpose of review in a judgment like that below rendered.

(See also Haseltine v. Bank, 183 U.S. 130, 22 S.Ct. 49, 46 L.Ed. 1117 (1901), at 131 where Mr. Justice Brown held:

> We have frequently held that a judgment reversing that of a court below, and remanding the case for further proceedings, is not one to which a writ of error will lie.

Here, the State of Washington is seeking a Writ of Certiorari to the Court of Appeals for Division II, which remanded Mr. Dyer's appeal for further proceedings not inconsistent with its opinion.

In McComb v. Knox Co. Com., 91 U.S. 1, 23 L.Ed. 185 (1876), the State Supreme Court of Ohio reversed the Court of Common Pleas and remanded "for further proceedings according to law".

McComb applied to the United States Supreme Court for a Writ of Error to the Court of Common Pleas. Mr. Justice Waite held

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that a reversal by a State Supreme Court was not final since issues remain to be litigated. Only on remand could the decision of the Court of Common Pleas become final. And only then would that decision be open to review by the State Supreme Court. Only after review by the State Supreme Court would there be a final judgment of the highest court in the state in which a decision could be obtained. (See Rules of the United States Supreme Court: 20.01).

Granted, Respondent is citing civil precedent herein. Yet, the same reasoning applies where a discretionary writ is sought in a criminal proceeding.

Washington State Rules of Appellate Procedure (RAP)2.2 (b)(1) provides the state may appeal a criminal case only where the decision is final, except where the defendant was found not guilty. That rule defines a final decision as "a decision which in effect abates, discontinues or determines the case. . ."

Here, Mr. Dyer's case was not final until September 15, 1980 and the State did not appeal that decision. Instead, it sought a Writ of Certiorari on August 19, 1980 from this Court to the Court of Appeals of the State of Washington, Division II.

Even assuming that Petitioner's application for a Writ of Certiorari would otherwise invoke the jurisdiction of this Court, because a federal question is involved; nevertheless, the writ should still be dismissed.

The issue of what effect a federal question has, which is contained within an application for a Writ, was addressed in Louisiana Navigation Co. v. Oyster Commission of Louisiana, 226 U.S. 99, 33 S.Ct. 781 57 L.Ed. 138 (1912).

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This case involved an application for a writ of error to the State Supreme Court which had reversed the trial court and had remanded for further proceedings. The United States Supreme Court dismissed for want of final judgment, even though federal questions were presented to the Court. The Court held that when dealing with questions of finality, the form of the judgment controls.

Mr. Chief Justice White concluded at 102 in Louisiana Navigation Co. v. Oyster Commission of Louisiana, supra,:

> Of course, for the purpose of disposing of the motion to dismiss upon the ground of want of finality of judgment, we have taken it for granted, for the sake of argument, that the case otherwise involved Federal questions within our power to review. Dismissed for want of jurisdiction.

This case was dismissed for want of jurisdiction, even though the United States Supreme Court noted that the Supreme Court of Louisiana's decision reversing and remanding to the lower court had become law of the case, binding upon the state high court and upon the other courts of the state.

For the above reasons, Petitioner's application for a Writ of Certiorari to the Court of Appeals, Division II of the State of Washington, should be dismissed: there was no appeal to Washington State's highest court from the final decision in Kitsap County Cause no. C-3604, which was entered on September 15, 1980. Instead, the Petitioner seeks a Writ of Certiorari to the Court of Appeal's decision, which merely remanded the case for further proceedings.

II

Petitioner argues that the basis for the Court of Appeals remand, State v. Holsworth, supra, should be examined by the Court

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because the Washington Supreme Court's decision purports to allow a collateral attack on a plea of guilty-when used in subsequent habitual criminal proceedings-brought after the effective date of the standards established in Boykin v. Alabama, supra, in 1969.

Here, Mr. Dyer plead guilty in 1962 and there is no record of those proceedings to show that his plea was entered voluntarily. Yet, that same conviction was used as the basis of habitual criminal proceedings brought in 1978.

On appeal the Court of Appeals for Division II, ruled that the State of Washington had to prove beyond a reasonable doubt, according to the guidelines established in State v. Holsworth, supra, that Mr. Dyer's 1962 conviction was entered voluntarily according to the standards established in Boykin v. Alabama, supra.

Here, Petitioner alleges that Mr. Dyer is allowed to collaterally attack a prior judgment and for that reason State v. Holsworth, supra, should be reversed,

A collateral attack is defined as follows in Batey v. Batey, 35 Wn.2d 791, 215 P.2d 694 (1950), where at 798 34 C.J. 521 §827 is cited and quoted with approval:

> A collateral attack is an attempt to impeach the judgment by matters dehors the record, in an action other than that in which it was rendered; an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it; any proceeding which is not instituted for the express purpose of annulling, correcting, or modifying such decree; an objection, incidentally raised in the course of the proceeding, which presents an issue collateral to the issues made by the pleadings. In other words, if the action or proceeding has an independent purpose, contemplates some other relief or result, although the overturning of the judgment may be important or even necessary to its success, then the attack upon the judgment is collateral.

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Generally, judgments may not be collaterally attacked. State v. Petersen, 16 Wn.App. 77, 535 P.2d 1110 (1976). However, the reasoning of State v. Holsworth, supra, reveals that a defendant's challenge to the voluntariness of pre-Boykin pleas, when used in port-Boykin criminal proceedings filed by the State, is not a collateral attack. Rather, a guilty plea that is not voluntarily nor knowingly entered, deprives the defendant of due process of law. Any judgment entered as a result of said plea is void. Even so, State v. Petersen, supra, explains that in the State of Washington a collateral attack against judgments that are void is permissible.

The defendant in State v. Boyd, 21 Wn.App 465, 586 P.2d 878 (1978), argued that his 1968 conviction-used in part as the basis for subsequent havitual criminal proceedings brought in 1978-was entered as a result of his pleading guilty without knowledge of the sentencing consequences. Therefore, he reasoned the trial court lacked jurisdiction.

The Boyd court observed at 478:

> To suggest that a constitutional infirmity has the effect of depriving a court of jurisdiction proves too much and establishes a dangerous precedent. But we do feel that a constitutional defect renders a judgment void; and that judgments void for any reason should be subject to collateral attack.

See also State v. Bayles, 121 Wash. 215, 209 Pac. 20 (1922), where it stated at 219:

> A void order or judgment may be attacked at any time or place and in any proceeding by persons adversely affected. . .a void judgment may be attacked directly and collaterally.

Here, the Washington Supreme Court did not err in State v. Holsworth, supra, according to state law. A collateral attack

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on a void judgment is permissible. In fact, however, the high court in Holsworth ruled at 154, that when a prior plea of guilty is challenged in subsequent habitual criminal proceedings this is not a collateral attack:

> However, the attack in an habitual criminal proceeding or the use of pre-Boykin [italics] pleas is neither collateral nor retroactive. The challenge instead is to the present use of an invalid plea in a present [italics] criminal sentencing process.

According to precedent in the State of Washington, once a defendant raises the issue of the validity of a prior plea of guilty that inevitably leads to his conviction-once that conviction is used to form the basis of an habitual criminal proceeding, as was done to Respondent here,-the conviction can be attacked directly as a denial of due process of law or even collaterally as a void judgment.

United States Supreme Court cases also allow defendants to raise the issue of the validity of prior convictions. These convictions may be challenged when they are used to form a prong of subsequent habitual criminal proceedings, Burgett v. Texas, 389 U.S. 109, 88 S.Ct. 258, 19 L.Ed.2d 319 (1967), or at any time. Lewis v. United States, 445 U.S. 55, 100 S.Ct. 915, _____ L.Ed. _____ (1980).

For instance, it was held in Burgett v. Texas, supra, that where certified records of previous convictions raise a presumption that a defendant was denied representation, then those convictions are void. Burgett's convictions were void because of an abridgment of his constitutional right to counsel and could not, therefore, be used by the State in recedivist proceedings.

As stated in Boykin v. Alabama, supra, the prosecution has

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the burden of showing that a defendant has voluntarily waived his constitutional rights and his waiver will not be presumed from a silent record. If review is later sought, such as Respondent, Mr. Dyer, did here, the record must show an effective waiver. The judgment, it could be argued, is not being collaterally attacked. Instead, the procedures by which a defendant had entered his earlier plea and the resulting conviction are examined and are subject to being reviewed when these convictions are relied upon by the State at a future date.

Henderson v. Morgan, 426 U.S. 637, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976), explains that when a guilty plea is entered involuntarily, the judgment of conviction is entered without due process of law.

Henderson had plead guilty to second degree murder without being informed of the essential elements of the charge. The case arose out of and was characterized by the United States Supreme Court at 638, as a collateral attack on a judgment entered by a state trial court in an effort to have the conviction vacated because the plea was involuntary. The Supreme Court affirmed the Court of Appeals which had affirmed the Federal District Court's ruling that Henderson's plea was involuntary "as a matter of law".

Mr. Justice Stevens wrote that the judgment finding Henderson guilty of second degree murder was "defective". He stated at 644-645:

> Nevertheless, such a plea cannot support a judgment of guilty unless it was voluntary in a constitutional sense.

The constitutional sense Mr. Justice Stevens speaks of is due process of law.

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In Henderson v. Morgan, supra, the Petitioner argued at 646-647 that the affirmance of the lower court's decision:

> . . .will invite countless collateral attacks on judgments entered on pleas of guilty, since frequently the record will not contain a complete enumeration of the elements of the offense to which an accused person pleads guilty.

This argument was rejected and the defendant was allowed to collaterally attack the judgment. (See also, Lewis v. United States, supra, where the Court implicity acknowledged that the "predicate" felony may be subject to a collateral attack on constitutional grounds. The Court stated at 921:

> We therefore hold that §1202 (a) (1) prohibits a felon from possessing a firearm despite the fact that the predicate felony may be subject to collateral attack on constitutional grounds.

The Court noted in passing that a convicted felon may challenge the validity of a prior conviction or otherwise remove any disability at any time.

Consequently, the Petitioner's argument, that defendants should not be able to collaterally attack pre-Boykin pleas is without merit. Both State and Federal law allow this procedure during post-Boykin habitual criminal proceedings or at any time.

III

The decision of State v. Holsworth, supra, is supported by independent and adequate state grounds.

In response to Petitioner's claim that the Washington State Supreme Court erroneously appled the decisions of this Court in Boykin v. Alabama, supra, and in Burgett v. Texas, supra, and has created a conflict with Lewis v. United States, supra, the Washington high court based its decision, in part, upon Washington

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law. Mr. Justice Horowitz writing for a unanimous Court, composed of eight other Justices, observed at 157-158:

> Three years before the United States Supreme Court's decision in Boykin, this court expressly articulated the importance of full disclosure to a constitutional guilty plea:
>
> > To be voluntary, a plea of guilty must be freely, unequivocally, intelligently and understandingly made in open court by the accused person with full knowledge of his legal and constitutional rights and of the consequences of his act. . . .
>
> Woods v. Rhay, 68 Wn.2d 601, 605, 414 P.2d 601 (1966). This court thus presaged the holding of Boykin. Boykin v. Alabama, 395 U.S. 238, 244n.6, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969). Even many years before the United States Supreme Court's decision this state has adopted the principles supporting Boykin's disclosure requirements in considering the validity of guilty pleas.

Woods v. Rhay, supra, was decided in 1966, three years before Boykin. State v. Cinimi, 53 Wash. 268, 101 P. 891 (1909), was decided in 1909. Both cases are used by the Washington Supreme Court as state precedent for its decisions.

CONCLUSION

Petitioner's application for a Writ of Certiorari to the Court of Appeals of the State of Washington for Division II should be dismissed because there was no appeal from a final decision.

The application herein should be also dismissed because the Washington State Supreme Court correctly interpreted Federal constitutional law. The decision that a conviction entered before Boykin v. Alabama, supra, could not be used in the State of Washington during subsequent habitual criminal proceedings brought after the Boykin decision by the prosecution-where the

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court records failed to indicate whether Mr. Dyer voluntarily entered a plea of guilty in 1962-is supported by precedent.

Finally, the State of Washington decided State v. Holsworth, supra, in the alternative according to state law. Consequently, there exists independent and adequant state grounds for that Court's decision.

Respectfully submitted,

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State of Washington
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June 20, 1980

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Counsel:

Re: Supreme Court No. 47033-2 State v. William O. Dyer
Court of Appeals No. 3732-7-II

Following consideration of the above entitled Petition for Review on June 20, 1980, the following notation order was entered on page 290, Volume 1, of the petition for review docket:

"DENIED

/s/ ROBERT F. UTTER
Chief Justice."

Very truly yours,

JOHN J. CHAMPAGNE
Clerk

JJC:et

cc: Court of Appeals, Division II

Appendix, Exhibit 1

FILED
IN OPEN COURT
KITSAP COUNTY
SEP 15 1980
ROBERT L. FREUDENSTEIN, Clerk
By rw Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY

STATE OF WASHINGTON, Plaintiff, -vs- WILLIAM O. DYER, Defendant.	NO. C - 3 6 0 4 STIPULATION AS TO VALIDITY OF PRIOR GUILTY PLEA

THIS MATTER having come on before the undersigned Judge of the above-entitled court for hearing as to the validity of the defendant's prior guilty plea for purposes of habitual criminal adjudication, and the parties having agreed to certain facts with respect to such validity, it is hereby

MUTUALLY UNDERSTOOD, AGREED, AND STIPULATED between and among the undersigned parties as follows:

(1) That on the 13th day of August, 1962, the defendant entered a plea of guilty to the charge of Second Degree Burglary, a felony, in Kitsap County Superior Court Cause No. 42333;

(2) That on the 27th day of August, 1962, an Order Deferring Sentence and Granting Probation to this defendant was entered under said cause on the basis of said prior plea of guilty;

(3) That said plea of guilty was accepted in full compliance with all procedural and constitutional requirements in force at that time, including the right to be represented by counsel; and that said plea of guilty was knowingly and voluntarily entered under the totality of circumstances, the plea being made after the defendant had been advised of the nature of the charge, and the plea being made without improper threat or promise.

(4) That the defendant's plea of guilty as described above

Appendix, Exhibit 2

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was not entered in compliance with the requirements of Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), in that the record fails to show that prior to acceptance of the plea, the defendant was advised that his plea of guilty necessarily waives his right to jury trial, his right against self-incrimination, and his right to confront witnesses, and was not informed of any mandatory minimum or possible maximum sentence for the offense.

THIS STIPULATION has been entered into freely, voluntarily, and knowingly by all parties hereto with awareness and explanation of the possible legal consequences.

DATED and SIGNED this 15 day of September, 1980.

William O Dyer

WILLIAM O. DYER, Defendant

DATED and SIGNED this 15 day of September, 1980.

James L. Reese, III

JAMES L. REESE, III
Attorney for Defendant

DATED and SIGNED this 15th day of September, 1980.

KENNETH G. BELL
Deputy Prosecuting Attorney

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KITSAP COUNTY

SEP 15 1980

ROBERT L. FREUDENSTEIN, Clerk

By _____ Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY

STATE OF WASHINGTON, Plaintiff, -vs- WILLIAM O. DYER, Defendant.	NO. C-3604 ORDER VACATING HABITUAL CRIMINAL ADJUDICATION AND SENTENCE

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court for hearing as to the validity of the Defendant's prior guilty plea for purposes of habitual criminal adjudication, and the State of Washington being represented by KENNETH G. BELL, Deputy Prosecuting Attorney, and the Defendant appearing in person and being represented by counsel, JAMES L. REESE III; and the parties having entered into a stipulation as to certain facts with respect to the validity of Defendant's prior plea of guilty for such purposes; and the Court having accepted said stipulation, and having heard the comments and arguments of counsel, and having reviewed the files and materials herein and being fully advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED that the habitual criminal adjudication and sentence of this Defendant in this cause on the charge of Possession of Stolen Property, Second Degree is vacated, and the Defendant is to be resentenced on the charge of Possession of Stolen Property in the Second Degree.

DONE IN OPEN COURT this 15 day of September, 1980.

ROBERT J. BRYAN, JUDGE

Presented by:

KENNETH G. BELL
Deputy Prosecuting Attorney.

Approved for entry:

JAMES L. REESE III
Attorney for Defendant

C. DANNY CLEM
PROSECUTING ATTORNEY
KITSAP COUNTY
614 DIVISION STREET
PORT ORCHARD, WA. 98366
876-7174

Appendix, Exhibit 3

COUNTY OF KITSAP

FILED
IN OPEN COURT
KITSAP COUNTY
SEP 15 1980
ROBERT L. FREUDENSTEIN, Clerk
By _____ Deputy

STATE OF WASHINGTON,

Plaintiff,

-vs-

WILLIAM O. DYER,

Defendant.

NO. C-3604

JUDGMENT AND SENTENCE/
WARRANT OF COMMITMENT

I. HEARING

1. The defendant WILLIAM O. DYER was found guilty by ~~XXXXX~~ (verdict) of the crime(s) of: Possession of Stolen Property in the Second Degree

   on June 16, 19 78.

2. A sentencing hearing in this case was held on September 15, 19 80.

3. The following persons were present:

   Defendant: WILLIAM O. DYER
   Defendant's Lawyer: JAMES L. REESE III
   Deputy Prosecuting Attorney: KENNETH G. BELL

4. Defendant was asked if there was any legal cause why judgment should not be pronounced and no legal cause was shown.

II. JUDGMENT

IT IS ADJUDGED that the defendant is guilty of the crime(s) of: Possession of Stolen Property in the Second Degree

III. ORDER

IT IS ORDERED that:

1. The defendant is sentenced to a maximum term of:

   5 years for the crime of: Possession of Stolen Property in the Second Degree
   _____ years for the crime of:
   _____ years for the crime of:

   in such facility as the Department of Social and Health Services shall deem appropriate;

~~The sentences are to run concurrently~~

~~Defendant shall pay costs of this prosecution caused~~

~~Defendant shall pay fines followed~~

5. Defendant is remanded to the custody of the Sheriff of this county to be detained and delivered into the custody of the proper officers for transportation to and confinement in the appropriate facility.

DATED this 15th day of September, 19 80.

Robert J. Bryan
ROBERT J. BRYAN JUDGE

FORM: CR-7.030-1/27/78
REFERENCE: CrR 7.1,7.3

Appendix, Exhibit 4

THE STATE OF WASHINGTON TO:

The Sheriff of Kitsap County and to the proper officers of the Department of Social and Health Services.

The defendant WILLIAM O. DYER has been convicted in the Superior Court of the State of Washington of the crime(s) of: Possession of Stolen Property in the Second Degree

and the court has ordered that the defendant be punished by serving not more than: 5 years

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Social and Health Services; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence and a minimum term to be fixed by the Board of Prison Terms and Paroles.

DATED this 15th day of September, 19 80.

By direction of the Honorable:

ROBERT J. BRYAN JUDGE

ROBERT L. FREUDENSTEIN
CLERK

By: Diana M. Mitchell
DEPUTY CLERK

FINGERPRINTS

DATED this 15th day of September, 19 80.

Fingerprints attested by:

ROBERT L. FREUDENSTEIN
CLERK

By: Kathleen Hagenstedt
DEPUTY CLERK

CERTIFICATE

I, ROBERT L. FREUDENSTEIN, Clerk of this court, certify that the above is a true copy of the Judgment and Sentence and Warrant of Commitment in this action on record in my office.

DATED this 15th day of September, 19 80

ROBERT L. FREUDENSTEIN
CLERK

By: _____
DEPUTY CLERK

PRESENTED BY:

KENNETH G. BELL
Deputy Prosecuting Attorney

APPROVED FOR ENTRY:

JAMES L. REESE III
Attorney for Defendant

cc: Prosecuting Attorney
Defendant's Lawyer
Defendant
Jail
Institutions (3)

FORM: CR-7.030-1/27/78
REFERENCE: CrR 7.1,7.3